

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DONNA GARCIA,

No. C-11-1253 EMC

Plaintiff,

v.

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO COMPEL**

RESURGENT CAPITAL SERVICES, LP, *et*
al.,

(Docket No. 100)

Defendants.

Plaintiff has filed a motion to compel the attendance of three witnesses at trial: Jean Paul Torres, Jonathan Birdt, and Erica Brachfeld. Docket No. 100. The motion to compel Mr. Torres's attendance at trial has been rendered moot by the parties' stipulations to produce said witness. *See* Docket No. 107. Accordingly, the Court **DENIES** the motion to compel as to Mr. Torres as moot. Additionally, Brachfeld does not oppose the motion to compel as to Ms. Brachfeld, Docket No. 106; thus the motion to compel is **GRANTED** as to Ms. Brachfeld.

As for Mr. Birdt, Brachfeld's 30(b)(6) designee, Brachfeld's only argument against compelling him to attend trial is that he is outside the 100-mile radius in which the Court can compel his attendance. Opp. at 2. However, the Court has the power to compel his attendance at trial because, according to the docket sheet in this matter and Mr. Birdt's own representations, he resides in and/or does business within the state. *See* Fed. R. Civ. P. 45(b)(2), (c)(A)(ii) ("[S]ubject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held."); *Chung v. Chrysler Corp.*, 903 F. Supp. 160, 165 (D.D.C. 1995) ("Under the revised rule, a federal court can compel a witness to come from any place in the


1 state to attend trial, whether or not the local state law so provides.”) (citing Advisory Committee
2 Note to 1991 Amendments to Rule 45; 9 Wright & Miller, Practice and Procedure § 2451 (1994
3 Supp.) (purpose of Rule 45 as amended is “to enable the court to compel a witness found within the
4 state in which the court sits to attend trial”); David D. Siegel, *Federal Subpoena Practice Under The*
5 *New Rule 45 of the Federal Rules of Civil Procedure*, 139 F.R.D. 197, 210, 215 (1992)). Brachfeld
6 makes no argument or showing that Mr. Birdt’s attendance would cause him to “incur substantial
7 expense.” Rule 45(c)(3)(B)(iii). Accordingly, the Court **GRANTS** Plaintiff’s motion to compel Mr.
8 Birdt’s attendance at trial.

9 Brachfeld also appears to challenge a subpoena apparently served upon Nasif, Hicks, Harris
10 & Co. As this issue is not within the scope of the parties’ briefing previously ordered by the Court,
11 the Court does not consider it.

12 This order disposes of Docket No. 100.

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14 IT IS SO ORDERED.

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16 Dated: April 27, 2012

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18 EDWARD M. CHEN
19 United States District Judge
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